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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 v.

15 LOUIS V. SCHOOLER and FIRST
16 FINANCIAL PLANNING
17 CORPORATION d/b/a WESTERN
18 FINANCIAL PLANNING
19 CORPORATION,

20 Defendants.

Case No.: 3:12-cv-02164-GPC-JMA

ORDER APPROVING:

**SALE OF LV KADE PROPERTY
AND AUTHORITY TO PAY
BROKER'S COMMISSION**

[ECF No. 1506]

(REDACTED VERSION)

21 Before the Court is the Receiver's Motion for Approval of Sale of LV Kade
22 Property ("Motion"). ECF No. 1506. No opposition was filed. Based upon a review of
23 the moving papers and the applicable law, the Court **GRANTS** the Receiver's motion.

BACKGROUND

24 **A. The SEC Enforcement Action**

25 On January 21, 2016, the Court granted the SEC's motion for final judgment
26 against Defendant Louis V. Schooler. ECF No. 1170. The SEC had initiated this civil
27 action against Defendant Schooler and Western Financial Planning Corporation
28 ("Western") four years earlier, on account of their practice of defrauding investors into

1 purchasing unregistered securities. *Id.* (citing Second Summary Judgment Order, ECF
2 No. 1081). To carry out the scheme, Defendant Western bought undeveloped real estate,
3 with cash or through financing, and simultaneously formed one or more General
4 Partnerships (“GPs”) to own the land. First Summary Judgment Order, ECF No. 1074 at
5 10. Western then sold General Partnership units to investors and sold the undeveloped
6 real estate to the General Partnerships. *Id.* at 10. In total, Western raised approximately
7 \$153 million from almost 3,400 investors through implementing this scheme. *Id.*

8 **B. The Decline of the General Partnership Assets**

9 In 2013, the Court-appointed Receiver, Thomas Hebrank, engaged licensed
10 appraisers to value the 23 properties owned by the General Partnerships. ECF No. 203 at
11 2. Those professionals determined that the land was worth \$16,328,000 and that the net
12 appraised value (appraised value less outstanding balances on all mortgages) of the
13 properties was \$12,860,661. *Id.* The net appraised value represented just 8.41% of the
14 total funds that the general partners had invested in the land. *Id.* The Receiver further
15 estimated that, based on the then-current appraised values of the land, the average GP
16 investor would suffer an 88.40% loss if the GP properties were sold in 2013. *Id.*

17 Three years later, soon after final judgment was entered, the Receiver moved for
18 authority to conduct an Orderly Sale of the General Partnership Properties (“Orderly
19 Sale”). Motion for Orderly Sale, ECF No. 1181-1. In the Motion, the Receiver indicated
20 that the aggregate value in the GP accounts had been steadily decreasing while litigation
21 was ongoing. *See id.* In September 2012, the Receivership had assets of \$6.6 million.
22 *Id.* at 1. By the end of 2015, the assets had dropped to \$3.5 million, and the Receiver had
23 reason to believe that the value of the Receivership would continue to drastically
24 decrease through the end of 2016.¹ This decline, he noted, was due to three main factors:
25

26
27 ¹ The Receiver provided the Court with projections that the Receivership would further decline to \$1.8
28 million by the end of 2016. Indeed, the Receiver’s projection has since proved to be accurate. The
Eighteenth Interim Status Report submitted by the Receiver indicates that the Receivership’s current cash
balance is \$1,546,447. ECF No. 1441 at 20.

1 (1) 14 of the 23 properties were not appreciating in value²; (2) the properties were not
2 worth enough to cover the costs of the GPs carrying the properties; and (3) low levels of
3 investor contributions to pay GP administrator fees, tax preparation fees, property taxes,
4 property insurance premiums, and notes owed to Western. *See id.* at 1-2. In other words,
5 the Receiver concluded, because the money being spent to hold the GP properties was
6 disproportionately high in relation to the value of the GP's real estate assets, the
7 Receivership was in a steady decline. *Id.*

8 In order to prevent the value of the Receivership from falling into further decline,
9 the Receiver proposed that the GP properties be sold in accordance with Court-approved
10 orderly sale procedures. *Id.* The Receiver's proposal explained that the best way to
11 maximize the value of all of the GP assets for the benefit of all investors, irrespective of
12 any given investors' direct property interest, was to initiate an orderly sale of the GP
13 properties. *Id.* The Receiver estimated that the Receivership, after conducting sales of
14 the GP properties, Western's properties and asset recovery, would be worth \$21,804,826.
15 *Id.* at 16.

16 **C. The Receiver's Motion for Orderly Sale**

17 On May 20, 2016, the Court held a hearing on the Receiver's Motion for Orderly
18 Sale, at which time the Court heard from the SEC, Defendant, the Receiver, and the
19 investor-intervenors — that is, those investors who were granted permission under Rule
20 23 to intervene to oppose the Receiver's Motion. *See* ECF No. 1298. A short time
21 thereafter, on May 25, 2016, the Court approved, in part, the Receiver's Orderly Sale
22 process.³ ECF No. 1304.

25 ² By way of example, the Receiver notes that the value of these 14 properties in 2016, \$3,732,815, was about
26 \$400,000 less than their value in 2013, \$4,137,000. *Id.* at 2.

27 ³ The Court directed the Receiver to file a Modified Orderly Sale Process that incorporated the public sale
28 process consistent with the requirement of 28 U.S.C. § 2001. ECF No. 1304. The Receiver filed a modified
proposal on June 8, 2016 (ECF No. 1309) and the Court approved the modified proposal on August 30, 2016
(ECF No. 1359).

1 In approving the Orderly Sale, the Court addressed and evaluated the concerns
2 expressed by the Receiver, the SEC, and myriad investors, all of whom held differing
3 positions on whether the Orderly Sale would benefit the Receivership estate. *See*
4 *generally* ECF Nos. 1181 (Motion for Orderly Sale), 1232 (SEC Response), 1234 (Dillon
5 Investors' Response), 1235 (Graham Investors' Response); *see also, e.g.*, ECF Nos. 1240,
6 1242, 1244, 1249-1257 (Letters from Investors). The Court also took into consideration
7 the recommendations of the investors' experts, as set forth in the Xpera Report. *See* ECF
8 No. 1304 at 16. The Xpera Report, the Court noted, substantially agreed with the
9 Receiver on how to maximize the value of the Receivership estate and, for the most part,
10 agreed on the appraised value of the various GP properties. *Id.* As such, the Court
11 directed the Receiver, where feasible, to incorporate the recommendations of the Xpera
12 Report into his ultimate Orderly Sale proposal. *Id.* at 19.

13 On July 22, 2016, the Receiver moved for permission to engage CBRE, a real
14 estate brokerage firm, as a consultant in order to weigh the pros and the cons of the Xpera
15 Report. ECF No. 1341-1. The Court granted the Receiver's motion on August 30, 2016.
16 ECF No. 1359. CBRE presented its findings on the GP properties on October 24, 2016.
17 ECF No. 1419 (filed under seal). On November 22, 2016, the Receiver submitted a
18 report evaluating the Xpera Report recommendations. ECF No. 1405. The Court
19 reviewed the Receiver's report and adopted the recommendations contained therein on
20 December 12, 2016. ECF No. 1423.

21 **D. LV Kade Property**

22 The LV Kade property is comprised of 57 acres of undeveloped land in the City of
23 North Las Vegas, Clark County, Nevada. ECF No. 1506 at 2. Four of the general
24 partnerships in the receivership jointly hold the property: the Hollywood Partners, the
25 BLA Partners, the Checkered Flag Partners, and the Victory Lap Partners (collectively
26 the "LV Kade partners"). *Id.*

27 With the Court's permission, the Receiver appraised the LV Kade property, along
28 with the rest of the properties in the Receivership, in 2013. ECF No. 1405, Ex. A. At

1 that time, the appraised value of the LV Kade property was \$4,110,000. *Id.* at 12. By
2 2015 and according to a broker opinion value, the property's worth had increased to
3 \$8,260,000. *Id.* One year later, in 2016, the Xpera Group valued the LV Kade property
4 between \$8,690,220 and \$11,173,140. *Id.* Later on in 2016, CBRE estimated that the
5 value of the property ranged from \$7,450,000 and \$9,310,000. *Id.*

6 While the value ranges proposed by the Xpera Group and CBRE overlapped, the
7 two professionals differed in terms of when the property should be sold. Whereas the
8 Xpera Group recommended that the property be held for five to ten years for
9 appreciation, *id.*, CBRE recommended that the Receiver [REDACTED]

10 [REDACTED] ECF No. 1419 at 31 (document under seal). [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED] *Id.* (document under seal).

14 Meanwhile, the general partnerships who owned the LV Kade property had fallen
15 into arrears on payments. In April 2015, the Receiver informed the Court that the LV
16 Kade partners did not have sufficient funds to pay 2015 expenses, would not have the
17 funds needed to pay expenses through 2016, and that the property risked default. *See*
18 ECF No. 1056 at 5, Exhibit A. As such, the Receiver requested permission to initiate a
19 process whereby the LV Kade investors would be given an opportunity to "raise
20 sufficient capital to meet their payment obligations." *Id.* The Receiver's plan further
21 proposed that "If the GPs cannot raise the required capital within a set period of time, . . .
22 the properties should be sold." *Id.*

23 The Receiver explained that sale was appropriate in the event of a failed capital
24 call because "When GPs have insufficient cash to pay their mortgages, property taxes,
25 insurance, and other expenses, the value of their property interests quickly become
26 impaired due to defaults, late charges, penalties, and accrued interest." *Id.* at 3. Given
27 such consequences, the Receiver stated that "the only way to preserve the value of [the]
28 GP property interests is to sell them and stop the accrual of these charges against the

1 properties.” *Id.* The Court approved the Receiver’s plan on May 12, 2015. ECF No.
2 1069.

3 Thereafter, the Receiver initiated capital calls to recover the remaining expenses
4 owed on the LV Kade property through 2016. ECF No. 1166 at 2. The Receiver later
5 informed the Court that the attempt failed. *Id.* More specifically, the Receiver stated that
6 while the LV Kade property needed \$99,279 to cover its 2016 expenses, the capital call
7 only recovered \$10,855. *Id.* Because the LV Kade partners failed to cover the necessary
8 expenses, the Receiver moved the LV Kade property to the orderly sale process in
9 accordance with the Court-approved plan. *Id.* Subsequently and in light of the fact that
10 the LV Kade property expenses remained in arrears, the Receiver asked the Court for
11 permission to list the property for sale with a licensed broker in Las Vegas, Nevada. *Id.*
12 The Court approved the Receiver’s recommendation on January 14, 2016. ECF No.
13 1168.

14 Beginning in February 2016, the Receiver’s broker began to actively market the
15 LV Kade property. ECF No. 1506 at 3. The broker listed the property on LoopNet and
16 Property Line, two “widely used property listing services.” *Id.* The broker also sent the
17 LV Kade listing to “approximately 2,400 broker and buyer contacts in the California and
18 Nevada commercial/industrial real estate markets[.]” *Id.* The broker sent follow-up
19 “email blasts” reminding recipients of the LV Kade listing, and the broker additionally
20 made a number of direct calls to “land owners, developers, and investors” that the broker
21 knew in the Las Vegas area. *Id.*

22 In October 2016, the broker reached out to its broker/buyer contacts with a call for
23 offers. *Id.* Two offers came in. *Id.* One for \$8,250,000 and one for \$8,500,000. *Id.*
24 Pursuant to the modified orderly sale process, the Receiver sent notice of the offers to the
25 investors and asked the two offerors to submit a best and final offer. *Id.* Both offerors
26 made a final offer with the highest being for \$8,750,000. *Id.* No investor submitted a
27 substantive response to the Receiver’s notice. *Id.*
28

1 After entering into negotiations, the offeror and Receiver reached an impasse over
2 the terms of a purchase and sale agreement. *Id.* While those negotiations stalled, the
3 Receiver received another offer from Prologis L.P (“Prologis”) for \$8,825,000. *Id.*
4 Receiver and Prologis began negotiations and came close to executing a purchase and
5 sale agreement. *Id.* Thereafter, the initial offeror increased its offer to \$9,500,000. *Id.*
6 The Receiver proceeded to give Prologis an opportunity to match the new offer and “sign
7 the purchase and sale agreement at that amount.” *Id.* at 3-4. Prologis agreed and the
8 parties executed a purchase and sale agreement. *Id.* at 4. Prologis (“the Buyer”) has
9 since removed all contingencies. *Id.*

10 In accordance with the Court-approved modified Orderly Sale procedures, *see*
11 *generally* ECF No. 1309, 1359, the Receiver sent notice of the offer to investors, but no
12 substantive response addressing the offer was received. ECF No. 1506. After executing
13 the purchase agreement, the Receiver laid out a timeline for the submission of qualified
14 overbids pursuant to the modified Orderly Sale procedures. *Id.* On September 5, 2017,
15 the Receiver notified the Court that no qualified overbids had been received for the LV
16 Kade property. ECF No. 1510.

17 **E. Conclusion**

18 The Court finds that the purchase price of \$9,500,000 is reasonable in light of the
19 Xpera Group and CBRE evaluations. The purchase price falls within the range provided
20 by the Xpera Group (\$8,690,220 – \$ 11,173,140) and is above the range provided by
21 CBRE (\$7,450,000 – \$9,310,000). The Court moreover concludes that selling the LV
22 Kade property now is fair and reasonable in light of the LV Kade partners’ inability to
23 satisfy the operating expenses of the property. The Receiver provided the partners with
24 an opportunity to hold the property if sufficient capital could have been raised to cover
25 necessary expenses through 2016. After the capital calls failed, the property was moved
26 into an orderly sale process in accordance with the Court-approved procedure.
27 Accordingly, the Court finds that the immediate sale of the property and its purchase
28 price is reasonable and in the best interests of the Receivership estate.

1 The Court is also satisfied that the Receiver has complied with the modified
2 Orderly Sale procedures. The Receiver’s notice of the sale adhered to the modified
3 Orderly Sale procedures, which require that notice of the sale be published “in the
4 county, state, or judicial district of the United States *wherein the realty is situated*,” 28
5 U.S.C. § 2002 (emphasis added), by publishing notice in the Las Vegas Review-Journal
6 and by providing notice to the investors. Accordingly, and given that no opposition to
7 the present Motion has been filed, or raised, and that no qualified overbid was received,
8 the Court **GRANTS** Receiver’s motion for approval of sale (ECF No. 1506).

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Accordingly, the Court makes the following findings and orders:

1. The Motion is granted;
2. This Court has subject matter jurisdiction over all matters related to this Motion;
3. On March 4, 2015, after due notice and an opportunity to be heard was given to the Receivership Entities, including Hollywood Partners, BLA Partners, Checkered Flag Partners, and Victory Lap, and their investors, this Court ordered that each of the Receivership Entities and their assets are to remain within the Receivership. ECF No. 1003.
4. This Court further ordered, after due notice and an opportunity to be heard was given to the Receivership Entities, including Hollywood Partners, BLA Partners, Checkered Flag Partners, and Victory Lap Partners and their investors, that the Receiver was authorized to conduct a Modified Orderly Sales Process with respect to certain properties owned by Receivership Entities, including the LV Kade property. ECF No. 1304, 1359 (“Modified Orderly Sale Process”).
5. The Receiver has complied with the terms of the Modified Orderly Sales Process with respect to the LV Kade property, including the retention of a qualified licensed broker in connection with the marketing of the property. Broker made commercially reasonable efforts to market the property to potential buyers.

1 6. The Receiver's notice of the sale complies with 28 U.S.C. section 2002
2 requiring that notice of the sale be published "in the county, state, or judicial district of
3 the United States where in the realty is situate" and adhered to the requirement in the
4 Modified Orderly Sale Process that notice be provided to the investors of the
5 Receivership Entities.

6 7. Due Notice of this Motion and an opportunity to be heard was given to each
7 of the Receivership Entities and their investors.

8 8. The sale of the Property known as the LV Kade property, as described on
9 Exhibit A to the Declaration of Thomas C. Hebrank in support of the Motion
10 ("Property"), by Thomas C. Hebrank, as receiver for Hollywood Partners, BLA Partners,
11 Checkered Flag Partners, and Victory Lap Partners, to Prologis, L.P. is authorized,
12 confirmed and approved;

13 9. The purchase price of \$9,500,000 for the LV Kade property is reasonable,
14 confirmed and approved;

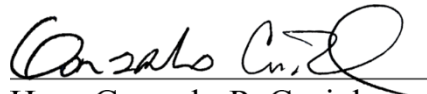
15 10. The Receiver is immediately authorized to complete the sale transaction,
16 including executing any and all documents as may be necessary and appropriate to do so;

17 11. The Receiver is authorized to immediately pay, upon closing of the sale, a
18 commission of 6% of the final purchase price to Broker Colliers International; and

19 12. Any and all interests and claims to the LV Kade property that the GPs and
20 any of their investors may have are transferred to the proceeds of the sale of the LV Kade
21 property.

22 **IT IS SO ORDERED.**

23
24 Dated: September 5, 2017


Hon. Gonzalo P. Curiel
United States District Judge